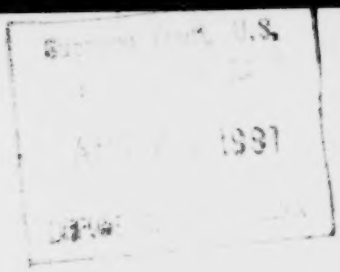
91-342



No. _____

_____

IN THE SUPREME COURT OF THE UNITED STATES

_____

October Term, 1991

_____

MAHINDER S. UBEROI, Petitioner

v.

BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO, Respondent

_____

PETITION FOR WRIT OF CERTIORARI TO COLORADO COURT OF APPEALS

_____

MAHINDER S. UBEROI, PRO SE
819 Sixth Street
Boulder, CO 80302
(303) 442-2879

QUESTIONS PRESENTED

1. Does petitioner have a federal right to represent himself in state courts to vindicate his state rights and federal civil rights under 42 U.S.C. §1983?

2. Is petitioner denied his XIV Amend. rights of equal protection and due process when the state district court permanently enjoined him from appearing pro se in the district when respondent, as a bystander, filed action alleging that petitioner had failed to prevail on some motions and claims in civil rights and other cases in state and federal courts when respondent was not even a party to some of the cases and had no case or controversy, or standing and the court had no jurisdiction?

3. Was respondent's only remedy, for

petitioner's allegedly frivolous civil rights claims, attorney fees under 42 U.S.C. §1988 in actions where it was a defendant but not a satellite action to permanently enjoin petitioner from appearing pro se in the district?

4. Whether permanent injunction, issued from the bench after severely limited preliminary hearing and without examining hundreds of pages of exhibits admitted into evidence at the hearing, denied due process and equal protection?

5. Is the injunction fatally defective because it states no reason for its issuance and unconstitutionally enjoins petitioner from appearing pro se in a defensive position?

6. Was respondent's case a retaliation against petitioner for his successful

lobbying of state legislature and civil rights litigation against respondent and violated petitioner's I Amend. rights?

7. Was petitioner denied equal protection and due process when the trial judge was disqualified because she had expressed her opinion before the case was filed; she ejected petitioner from courtroom when he objected that she lacked jurisdiction and the case involved review of an underlying case in which her fellow judge is defendant?

8. Did respondent seek equitable relief with unclean hands after committing fraud against courts, federal government and petitioner, and to prevent action against respondent for its continued violations of petitioner's civil rights?

9. Did trial court deny due process by

caking judicial notice of proceedings held elsewhere without due process?

10. Did trial court have jurisdiction to dismiss meritorious compulsory counterclaims for petitioner's failure to proceed through counsel?

11. Whether Court of Appeals' policy and practice of always denying pro se, civil rights or minority appellants' motions for oral argument violated petitioner's rights of equal protection and due process?

12. Did trial and appellate courts deny petitioner meaningful access because of his pro se and/or minority status?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

Other

IN THE SUPREME COURT OF THE UNITED STATES

October, 1991

MAHINDER S. UBEROI, petitioner

v.

BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO, respondent

PETITION FOR WRIT OF CERTIORARI TO COLORADO COURT OF APPEALS

The petitioner, Mahinder S. Uberoi, respectfully, prays that a writ of certiorari issue to review the judgment and opinion of Colorado Court of Appeals entered on October 19, 1990, denied rehearing on November 23, 1990. Colorado Supreme Court denied certiorari on April 13, 1991.

OPINIONS BELOW

The opinion of Colorado Court of

Appeals and the decision of District Court of Boulder County, Colorado have not been reported. They are reprinted in the appendix hereto.

JURISDICTION

On August 17, 1988, respondent filed action in Boulder County District Court, Colorado, to permanently enjoin petitioner from appearing pro se in the district alleging that he had failed to prevail on some motions and civil rights and other claims in state and federal courts. On December 27, 1988, the court granted preliminary and permanent injunction. On October 19, 1990, Colorado Court of Appeals affirmed and denied rehearing on November 23, 1990. Colorado Supreme Court denied certiorari on April 13, 1991.

The jurisdiction of this court is invoked under 28 U.S.C. §1257(a). On August 5, 1991, Justice White extended the time to file the petition to and including August 23, 1991.

STATEMENT OF THE CASE

Petitioner is a male of Asian Indian origin, U.S. citizen, distinguished tenured professor and 3-term past chairman of Department of Aerospace Engineering at University of Colorado, see Who's Who in America, and Who's Who in the World, current editions. Respondent Board of Regents of University of Colorado filed a complaint asking Boulder County district court to review petitioner's concluded or pending cases, 2 civil rights cases in federal district court and some civil rights and other

cases in state courts, and to permanently enjoin him from appearing pro se in XX Judicial District of Colorado because he has failed to prevail on some motions or claims which wasted judicial resources.

Regents originally filed the case for injunction disguised as a motion in a concluded case, Uberoi v. University of Colorado et al., Boulder District Court Case No. 83 CV 625. On June 1, 1988, at hearing on the motion, Trial Judge Roxanne Bailin confessed that she lacked jurisdiction, denied the motion and asked respondents to file an independent complaint, the instance action. However, on June 1, 1988, she expressed her opinion before it was filed.

> It appears to me that Dr. Uberoi has become fixated and focussed on litigation as a way of life and to the extent that he has drawn the

> rest of us into it, we are entitled to protection.
>
> Where a judge gratuitously offers an opinion on a matter not yet pending before him and thereby shows a bias or prejudice against a party, a writ of mandamus will issue precluding a judge from hearing that matter. Pacific & Southwest Annual Conference of United Methodist Church v. Superior Court, 147 Cal. Rptr. 44 (1978).

On January 1, 1988, petitioner was pleading his case when Judge Bailin ruled:

> I refuse to listen to any more from you...when I said you were persistent and perverse, I was underestimating you, and I refuse to listen any more about this case. And I appreciate your leaving at this time.

The hearing continued ex parte after petitioner was ejected. Judge Bailin demonstrated extreme prejudice and hostility towards petitioner which was racially motivated.

> Even though the judge's demeanor and treatment of counsel may not be sufficiently adverse to cause the judge's disqualification for bias, it may still be proper for him to recuse himself...where the interest of justice may require that the cause be tried before another judge... . United States v. Ritter, 540 F.2d 459 (CA 10.)

Moreover, Judge Bailin's pervasive bias and prejudice is shown by otherwise judicial conduct and constitutes bias against petitioner. E.g., she has destroyed or refused to protect court records of petitioner's cases; she instantly approved respondents' affidavit of Bill of Cost and proposed order without giving petitioner an opportunity to respond to the Bill or object to the form of the proposed order. C.R.C.P. §§121-1-16 and 22, allow 15 days in which an opposing party may object or otherwise respond.

> A duly authorized rule of court has the power of law, and is binding upon the court as well as upon parties to an action, and cannot be dispensed with to suit the circumstances of any particular case. Rio Grande Irrigation & Colonization Co. v. Gildersleeve, 174 U.S. 603.

She denied petitioner the "privilege" to file motion for reconsideration of her clearly erroneous ruling because there is no such motion.

> A court of equity may always amend its decree on a proper showing. N.L.R.B. v. Sears Roebuck & Co., 421 U.S. 132, 165n.30.

> The general rule is that bias sufficient to disqualify a judge must stem from extra judicial source. U.S. v. Grinnel Corp., 384 U.S. 563, 583 (1976). In Davis v. Board of School Commissioners, 517 F.2d 1044 (CA 5, 1975), cert. denied, 425 U.S. 944 (1976), however, the court recognized that there is an exception where such pervasive bias and prejudice is shown by otherwise judicial conduct as would constitute bias. Parliament Ins. Co. v. Hanson, 676 F.2d 1069, 1075 (CA5, 1982).

Judge Bailin denied motions to disqualify her.

Petitioner moved to dismiss and/or strike complaint for (1) lack of jurisdiction over subject matter pending or decided by federal courts, appellate courts and other divisions of trial court, (2) lack of standing of respondents, (3) failure to allege the basic requisites for injunctive relief - the likelihood of substantial and immediate irreparable injury and inadequacy of remedies at law, and (4) complaint is redundant and immaterial. The motion was denied.

Petitioner answered and asserted 9 compulsory counterclaims. The instance case is a retaliation against petitioner for his civil rights actions, in federal

and state courts which subjected respondents to 42 U.S.C. §1983, see Uberoi v. University of Colorado, 713 P.2d 894 (Colo. 1986) and petitioner's lobbying of state legislature which subjected respondents to Open Records Law, see C.R.S. §24-72-202(1.5) and to Open Meetings Law, see C.R.S. §24-6-402(1), and helped to subject it to the jurisdiction of Colorado Civil Rights Commission, see The Colorado Civil Rights Commission ex rel. Reyes Ramos v. the Regents of the University of Colorado, 759 P.2d 726 (Colo. 1988).

Petitioner also sought declaratory judgment that respondent has maliciously and without jurisdiction revived and expanded cases which have been brought to authorized conclusions and sought

preliminary and permanent injunction to enjoin it from filing such complaints without seeking permission from District Court and serving a copy of the petition for permission on petitioner.

Judge Bailin held a truncated hearing for about 2 hours and, without examining hundreds of pages of documents admitted into evidence, issued permanent injunction from the bench which was later memorialized. See Appendix hereinbelow.

Colorado Court of Appeals dismissed appeal since counterclaims were pending and injunction was not certified under Rule 54(b). Colorado Supreme Court granted certiorari and later, on respondents' confession, ordered trial court to certify injunction under Rule 54(b). On remand trial court granted

respondent's motion to dismiss counterclaims since petitioner had not hired an attorney to prosecute them. Colorado Court of Appeal affirmed injunction and dismissal of counterclaims, and denied rehearing. Colorado Supreme Court denied certiorari. See Appendix hereinbelow.

REASONS FOR GRANTING THE PETITION

I.

Injunction violates petitioner's right to represent himself in state courts to vindicate his state rights and federal civil rights under 42 U.S.C. §1983

> The Founders believed that self-representation was basic right of a free people. Faretta v. California, 422 U.S. 806, n.39 (1975).

District Court cannot impose burdensome conditions on a litigant as to deny him meaningful access to the courts. Tripati v. Baumann, 878 F.2d 351, 352

(CA10, 1989).

> Sources of right of access include I Amend., due process clauses of V & XIV Amends. and Privileges & Immunities Clauses of Art. IV, §2. The right of access to the courts is substantive rather than procedural. Its exercise can be shaped and guided by the state, Bounds, 430 U.S. at 825, but cannot be obstructed... . Morello v. James, 810 F.2d 344, 346-7 (CA 2, 1987).

Board of County Commissioners v. Winslow, 706 P.2d 792 (Colo. 1985) disregards Faretta, legislative history of federal and state constitutions and forbids pro se filing with a conclusory statement that it does not infringe on constitutional rights since a litigant may hire an attorney to represent him.

II.

Trial court repeatedly violated petitioner's XIV Amend. rights of equal protection and due process

(a)

Trial court had no subject matter jurisdiction

Respondents asked trial court to review petitioner's cases in other courts or other divisions of the same court and enjoin him from appearing pro se in XX Judicial District of Colorado. District Court is a trial court, Colo. Const. Art VI, §9. The only appellate jurisdiction it has is over County Court. C.R.S. §13-6-310.

It certainly has no jurisdiction to entertain a complaint based on allegations of petitioner's conduct in federal courts.

The only active case pending in the District, Uberoi v. University of Colorado Board of Regents et al., 85 CV

2080-2, was assigned to Judge Sandstead. Judge Bailin lacked jurisdiction to enjoin petitioner from appearing pro se before Judge Sandstead. See C.R.S. §§13-5-131 and 132, power of a single judge in multiple judge districts.

> Each judge must exercise all the powers and functions of the court. Two or more judges...cannot share or divide such responsibility. People ex rel. Rucker v. District Court, 24 P.260 (Colo. 1890).
>
> Where injunction sought in one court proceeding would interfere with another court proceeding, considerations of comity require more than the usual measure of restraint, and injunction should be granted in the most unusual cases, particularly where the courts are of coordinate jurisdiction and subject to review by the same Court of Appeals. Berg v. State of Washington, 535 F.2d 505 (CA9, 1978).

(b)

Respondent has no case or controversy, has not sufficiently pleaded case for injunctive relief, has not met requirements of preliminary injunction

and has no standing

Proof of litigiousness will not support injunction. Pavilonis v. King, 626 F.2d 1075 (CA 1, 1980). Respondent has not pleaded the prerequisite of the issuance of preliminary injunction. See Rathke v. MacFarlane, 648 P.2d 648 (Colo. 1982). It has adequate remedy at law.

> There is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions. [Citations omitted, Prosser and Keeton on Tort, p. 898, 1984, Wes. Pub.

Respondent has no standing, certainly not on allegation of petitioner's conduct in cases to which it was not a party. It cites People v. Dunlap, 623 P.2d 408 (Colo. 1981), People v. Spencer, 524 P.2d 1057 (Colo. 1988), and People v. Carter, 878 F.Supp. 1484

(D.Colo. 1988). However, it is not authorized to bring actions on behalf of people.

Congress provided attorney fees under 42 U.S.C. 1988 as the sole remedy for allegedly frivolous civil rights claims and permanent injunction would violate congressional policy of encouraging such actions by "private attorneys general."

(c)

Injunction is fatally defective and unconstitutional

Injunction does not state any reasons for its issuance as required by C.R.C.P. 65(d), see Appendix hereinbelow. Whatcomb County v. Kane, 640 P.2d 1075 (Wash. App. 1982) vacated a similar injunction.

It is unconstitutionally broad since

it prohibits petitioner from appearing pro se in small claims court which is designed for *pro se* litigants, and it prohibits him from appearing *pro se* in a defensive position and violates equal protection and due process clauses of XIV Amend.

(d)

Trial court denied fair hearing to petitioner

Trial court held an expedited hearing on preliminary injunction over petitioner's objection that he did not have adequate time to prepare for the hearing which would involve review of 8 different civil actions, some of which were concluded years ago.

Hearing started at about 2:00 p.m. Respondents submitted hundreds of pages of pleadings and partial records from 8

cases which were admitted into evidence over petitioner's objections of surprise and that pleadings were hearsay, some of which were later amended. After about one hour, court recessed for about one hour. Trial court cut petitioner's testimony and ordered him to collect and submit, in 2 or 3 minutes, all his exhibits. Within the time allowed, petitioner submitted 27 exhibits which were admitted en masse and their identification by petitioner was not allowed.

Due process implies reasonable opportunity to defend rights. In re Dolph, 35 P.470 (1891), Woodson v. Ingram, 477 P.2d 455 (1970).

Without examining the documents admitted into evidence, trial court, from

the bench, issued permanent injunction.

> Before a district court adjudges, it must determine the facts itself on the basis of proffered evidence. Thompson v. Madison County Bd. of Ed., 476 F.2d 676, 678 (CA5, 1973).
>
> Where a case has been decided by the state supreme court in such a way that a party had not had a proper opportunity to present his evidence, he has been denied due process. Saunders v. Shaw, 244 U.S. 317 (1917).
>
> Assuming arguendo that petitioner was accorded due process:
>
> Injunction issued after summary proceedings is temporary regardless of how it is entitled or worded. Glen v. Weltz, 483 So.2d, 1248-9 (La.App. 4th Cir. 1986).

(e)
Judgment is void for trial judge was disqualified

Trial judge was disqualified on several independent grounds. *Supra*. Moreover, respondents alleged that petitioner should be enjoined from appearing pro se in XX Judicial District

of Colorado because of his conduct in Uberoi v. Richtel, D.Colo. 87-Z-961 which was dismissed as moot, each side to pay its own costs and attorney fees. Judge Bailin was disqualified from reviewing that case since Richtel is a fellow judge, and her impartiality might reasonably be questioned. Canon 3(C).

> [d]esign and purpose of the Code [of Judicial Conduct] were to impose a conduct upon the judges to which they must conform... . And like the attempt of a judge to exercise judicial power when prohibited by state or federal statutes, we find that such attempt [to proceed in violation of the Code] was void. Cuyahoga Valley Board of Mental Retardation v. Association of Cuyahoga County Teachers of the Trainable Retarded, 351 N.E.2d 777, 783 (Ohio, 1975).

(f)

Trial court lacked jurisdiction to dismiss counterclaims

Pursuant to C.R.C.P. (3)(a)

petitioner was required to plead his compulsory counterclaims in his answer.

On respondents' motion, trial court dismissed counterclaims for failure to prosecute without waiting the 15 days during which petitioner is entitled to respond. C.R.S. §121-1-10 and there was activity of record in 12 continuous months. Sub. §(3).

III.

Respondents seek equitable relief with unclean hands after committing fraud against courts, government, petitioner and continued violations of his civil rights

> No principle is better settled than the maxim that he who comes into equity must come with clean hands and keep them clean throughout the course of litigation, and if he violates this rule, he must be denied all relief whatever may have been the merits of his claim. Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 250 (1944). Root Refining Co. v. Universal Oil Products Co., 169 F.2d

1514, 534-35 (3rd Cir. 1948).

In support of its action for permanent injunction against petitioner, respondent cited proceedings in other cases which actually established it and others engaged in unlawful conduct against petitioner.

(a)

Respondents' fraudulent conduct about Open Records Law

Open Records Law was enacted after a year long study and respondent agreed to accept it, Colorado Legislative Council Research Publication No. 126 (1967) at 56. On January 29, 1970, President of University of Colorado wrote to petitioner and all other chairmen and deans:

> The "Open Records Act," An act providing for inspection of public records...has been given legal

> interpretation by John P. Holloway as resident legal counsel... . It shall be the policy of the University of Colorado to observe the requirements of this Act.

Respondents denied access to its public records after petitioner discovered it practiced racial discrimination and defrauded his and other grants from the U.S. It fraudulently claimed the "institution" in the Act does not show legislative intent to encompass it. Disregarding legislative history in violation of C.R.S. §2-4-203, the Court agreed. 686 P.2d 785 (Colo. 1984).

Petitioner lobbied the legislature. Within weeks, the senate by unanimous vote and the house with one dissenting vote legislated that "institution" was always intended to include respondent.

See C.R.S. §24-72-202(1.5).

Even so, respondent denied inspection of its public records claiming they were records of "private corporations," e.g., The University Improvement Corp., wholly controlled by respondent, and the disclosure would do public harm.

After a show cause hearing in Uberoi v. University of Colorado et al., Boulder D.Ct. 85 CV 2080-2, Judge Richtel ruled that respondent shall within 10 days permit access to most of the records in question. He further ruled:

> [legislature] simply amended the statute in response to Plaintiff's case in the Supreme Court to include the University as an institution... . I just don't think the legislature would have passed it had it thought about it as far as the impact on the University... . I'm going to grant a stay on that judgment...at least until the

parties have sought a writ from the Supreme Court.

Colorado Supreme Court denied petitioner's petition, as expected, since it has no authority to suspend a constitutionally firm statute because it displeases a trial judge.

Uberoi v Richtel, D.Colo., 87-Z-961 alleged that Richtel seized, in violation of Amend. IV, petitioner's privileged documents and otherwise denied meaningful access to court and his conduct was willfully unlawful and racially motivated.

At pretrial time, Richtel moved to dismiss stating he was assigned to criminal docket and fraudulently stating that petitioner's civil cases would not come before him. He is a judge of court of general jurisdiction and cannot be

confined to criminal docket. He was rotated to civil docket, and petitioner's cases did come before him.

17 C.J.S. Contempt, §10, p. 22 states the rule:

> [o]btaining court order by fraud or deceit...is contempt... . [Citations omitted.]

87-Z-961 was dismissed with prejudice as moot and each side to pay its own costs and attorney's fees.

(b)

Federal court has ruled that petitioner's action under Federal False Claims Act against respondent is meritorious

Uberoi v. University of Colorado et al., D.Colo. 82 M/LW 806 held:

> This court is not, however, convinced that information possessed by the government would have revealed that it was being charged for (1) equipment defendants otherwise acquired free; (2) salary amount beyond the cost sharing requirements, and (3) inflated research costs... . Thus, plaintiff

pro se's action based on Federal False Claim Act should not be dismissed.

Petitioner mostly prevailed or accepted offers of judgment from defendants in other cases.

(c)

Respondents have repeatedly filed fraudulent affidavits and pleadings

E.g., Uberoi v. University of Colorado et al., D.Colo. 82 M/LW 806, ruled that respondent's counsels T.D. Ayres and R.A. Tharp had filed fraudulent affidavits for attorney fees by including fees for actions in state court.

Uberoi v. University of Colorado et al., Boulder District Court, 83 CV 625, denied attorney fees and costs by omitting any reference to these matters in the judgment, and parties did not move to amend the judgment within 15 days

under Rule 59. Respondent fraudulently stated to Colorado Court of Appeals that trial court had not resolved the issue of attorney fees which improvidently dismissed the appeal but did not remand the case. Respondent fraudulently stated in trial court that Colorado Court of Appeals has remanded the case for determination of attorney fees.

Respondent's counsels Elizabeth McCann, Beverly Fulton and John Mann conspired with Judge Bailin to fraudulently assume jurisdiction and willfully violate, on grounds of race, petitioner's rights to due process and equal protection. This violated 18 U.S.C. §§241 and 242, proscribing conspiracy against federal rights of citizens and proscribing deprivation of

rights under color of law. Trial court should have referred this matter to U.S. Attorney for Colorado.

> Judges who would willfully discriminate on the grounds of race or otherwise would willfully deprive citizen of his constitutional rights...must take account of 18 U.S.C. §242. O'Shea v. Littleton, 44 U.S. 488, 503 (1974).

Petitioner was never deposed. Respondent confessed that it filed a fraudulent affidavit to recover costs of his deposition. Trial court should have referred this matter to District Attorney.

> Judge...had duty to notify proper authorities if he felt that a crime was being committed. Martinez v. Winner, 771 F.2d 424, 435 (CA10, 1985). [Vacated on other grounds.]

Respondent fraudulently claimed that petitioner's designation of record on appeal was contempt of trial court, and

he should be imprisoned for a term not exceeding six months.

In spite of petitioner's tenured professorship, respondent continues to prohibit him, on racially discriminatory basis, from doing any teaching or research, and the injunction is designed to prevent him from vindicating his rights.

IV.

Colorado Court of Appeals policy and practice of always denying pro se appellant's motions for oral argument, who are often minority with civil rights claims, violated petitioner's right of equal protection and due process

Court of Appeals denied petitioner's motions for oral argument in this case, Uberoi v. University of Colorado, et al., 88 CA 714, Uberoi v. Ellefson, et al., 89 CA 377, and Uberoi v. University of Colorado Board of Regents, et al., 90 CA

17, regardless of the merits. Under C.A.R. 34 oral argument shall be allowed upon request or the court's own motions. The court clerk has been unable to cite a single case where a non-attorney pro se appellant was allowed oral argument.

> A statute or a rule may be constitutionally invalid, as applied, when it operates to deprive an individual of a protected right, even though its general validity as a measure enacted in the legitimate exercise of state power is beyond question. Boddie v. Connecticut, 401 U.S. 371 (1971).

Court of Appeals has refused to assign petitioner's cases by lot to one of its three judge panels.

CONCLUSION

WHEREFORE, this petition for certiorari should be granted.

Respectfully submitted,

Mahinder S. Uberoi

MAHINDER S. UBEROI, pro se

APPENDIX

DISTRICT COURT, BOULDER COUNTY, COLORADO

No. 88 CV 1545-5

BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO

v.

MAHINDER S. UBEROI.

ORDER

This matter came on for hearing on December 16, 1988. The Court made oral findings of fact and conclusions of law and issued an injunction prohibiting Mahinder S. Uberoi from filing paperwork of any nature in any current or future pending case in the Twentieth Judicial District or filing any new case in the Twentieth Judicial District except matters relating to appeal or post-judgment proceedings unless he has an

attorney who enters his or her appearance in any such case.

The stay is effective January 16, 1989. Mr. Uberoi was granted a thirty-day stay on filing any paperwork due in any pending case.

By the Court
ROXANNE BAILIN

Dated: 12-27-88

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

Case No. 88 CV 1545-5

BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO,

Plaintiff

v.

MAHINDER S. UBEROI,

Defendant.

RE: AMENDED INJUNCTION

It having come to the Court's attention by its rereading the written injunction dated December 27, 1988, that

some ambiguity may be present in said order, the Court now amends it to make clear that Mahinder Uberoi is enjoined from representing himself in any manner in the Twentieth Judicial District beginning January 16, 1989, except in post-judgment collection proceedings or appeals.

By the Court
ROXANNE BAILIN
DISTRICT COURT JUDGE

DATED: January 23, 1989.

COLORADO COURT OF APPEALS

No. 89 CA 0124

BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO,

Plaintiff-Appellee,

v.

MAHINDER S. UBEROI,

Defendant-Appellant.

Appeal from the District Court of Boulder County No. 88 CV 1545-5

Honorable Roxanne Bailin, Judge

DIVISION I
Opinion by JUDGE PLANK
Pierce and Tursi, JJ., concur

INJUNCTION AND JUDGMENT AFFIRMED

Defendant, Mahinder S. Uberoi, appeals the injunction entered by the trial court prohibiting him from representing himself as a plaintiff in the Twentieth Judicial District in any matter other than post-judgment collection proceedings. Defendant also appeals the trial court's dismissal of his counterclaims. We affirm.

Defendant is a tenured professor at the University of Colorado. In August, 1988, the Board of Regents of the University sued defendant to enjoin him from filing or maintaining actions pro se in the Twentieth Judicial District, alleging that he had seriously abused the

judicial process. Defendant eventually responded by answering and asserting several counterclaims.

In December, 1988, the trial court held a hearing on the injunction. Each party was allowed to argue and present evidence in support of its position. From the bench, at the end of the hearing, the trial court issued detailed findings of fact and an injunction that prohibited defendant from filing any documents pro se in pending cases in the Twentieth District, and from filing any new pro se cases in the District. A written order, later amended, followed.

Defendant immediately appealed the order to this court. However, because defendant 's counterclaims remained pending in the trial court, it was

dismissed for lack of certification under C.R.C.P. 54(b). Thereafter, defendant filed a petition for certiorari with the Colorado Supreme Court on the C.R.C.P. 54(b) issue.

Although the petition was originally denied, the Colorado Supreme Court later granted it on his motion for reconsideration. The Supreme Court, however, withdrew the writ because defendant had an unresolved motion for reconsideration pending in the Court of Appeals at the time that he filed his petition for writ of certiorari. The case was remanded to the Court of Appeals, and then to the trial court, where defendant's counterclaims were dismissed for his failure to prosecute. This appeal followed.

I.

Defendant first contends that the trial court lacked jurisdiction to enter the injunction. He argues that the order denies him his constitutional right of access to the courts. We disagree.

In Board of County Commissioners v. Winslow, 706 P.2d 792 (Colo. 1985) cert. denied, 475 U.S. 1018 (1986), the Colorado Supreme Court held that a trial court has the authority to enjoin pro se litigation within its own judicial district in order to prevent a serious abuse of judicial resources. The court noted:

> "forbidding a party from filing pro se does not infringe upon his constitutional right of access to the courts because he still may obtain access to judicial relief by employing an attorney authorized to practice in the State of Colorado."

Winslow is dispositive of defendant's first contention here. The trial court in this matter enjoined defendant from initiating or maintaining pro se actions within its judicial district after it determined that he had seriously abused the judicial process.

II.

Defendant next claims that even if the court had the authority to restrain him from representing himself, it erred in ordering an injunction here. We disagree.

In several cases prior to Winslow, the Colorado Supreme Court enjoined parties from appearing pro se in courts of this State. See People v. Dunlap, 623 P.2d 408 (Colo. 1981); Board of County Commissioners v. Barday, 197 Colo. 519,

594 P.2d 1057 (1979); Shotkin v. Kaplan, 116 Colo. 295, 180 P.2d 1021 (1947).

In each case, the court balanced the litigant's right of access to the courts against other litigants' and the general public's interests in protecting judicial resources from the "deleterious impact of repetitious, baseless pro se litigation." Winslow, supra.

The supreme court in Dunlap concluded that an injunction was appropriate when pro se litigants filed numerous groundless actions against public officials for conduct within the scope of the officials' duties. The court held that the litigants had no right to burden court resources further without the guidance of counsel.

Similarly, in Barday, the court

found the judicial system unduly burdened by Barday's pro se claims against county commissioners, judges, attorneys, the City of Boulder, and the State of Colorado. The court found that Barday had unnecessarily expanded proceedings involving marital problems into several lawsuits based on factually and legally unsupported allegations that the various officials deprived him of his rights. The court found that he, too, required guidance of legal counsel.

Likewise, the trial court in this matter balanced defendant's right to represent himself against the strain it put on court resources. It reviewed the pleadings of the eight cases filed by defendant and found that in each case, defendant had filed motions that

unnecessarily expanded the proceedings - motions for reconsideration and clarification as well as motions for disqualification of judges and attorneys who disagreed with him. Further, if defendant was unsuccessful in the motions for disqualification, he filed lawsuits against the judges or attorneys.

In addition, the court found that almost without exception the claims were determined to be frivolous, groundless, or otherwise dismissable. On the few occasions that defendant my have had meritorious claims, the court observed that those claims were lost "in vexatious and groundless litigation."

The court concluded that the defendant filed actions without regard for the merits, and that the minor

matters on which he was successful were offset by the thousands of dollars of attorney fees assessed against him. The court found that the interests of other litigants and the general public were adversely affected by the defendant's use of judicial resources without guidance of counsel and that defendant needs an attorney to protect both the system and his own interests.

We conclude that the trial court applied the proper test in determining that the defendant had seriously abused the judicial process. And, inasmuch as those findings have support in the record, they will not be disturbed on review. See Gebhardt v. Gebhardt, 198 Colo. 28, 595 P.2d 1048 (1979).

III.

Defendant next argues that he was not afforded due process in the manner in which the injunction proceeding was held. He claims that the trial court erred in denying his request for a continuance of the hearing and in holding "expedited" proceedings. We perceive no infringement of defendant's right to due process.

Due process requires that no person be deprived of a valuable right without adequate notice and the opportunity to be heard. In re Marriage of Franks, 189 Colo. 490, 542 P.2d 845 (1975).

Here, a complaint for injunctive relief was served on defendant in August, 1988. The University provided defendant with the exhibits it intended to use in support of the injunction first in June, 1988, and again in August, 1988. The

University also filed a similar complaint in U.S. District Court. The exhibits in both cases consisted of the pleadings and court orders in the six state and two federal cases to which defendant was a party. The hearing took place December 16, 1988.

Since defendant had the exhibits to review and was aware of the grounds for the injunction for at least three months before the hearing and since he was personally familiar with each of the exhibits, we conclude that he had adequate notice.

Other than the time it took for the University to present its exhibits, defendant had the entire afternoon to argue and present evidence in opposition to the injunction. Defendant spent much

of this time arguing with the court on matters previously concluded or irrelevant to the injunction and reviewing documents to determine which to offer as evidence.

The trial court provided defendant with adequate notice of the time, date, and length of the injunction hearing. Defendant should have been prepared for the hearing prior to the afternoon of December 16, 1988.

Defendant was permitted to admit exhibits into evidence and was furnished more than sufficient time to present his position to the trial court. We therefore find that the second requirement of due process, opportunity to be heard, was also met.

IV.

Defendant next argues that the trial court improperly dismissed his counterclaims. We disagree.

The trial court dismissed defendant's counterclaims upon motion by the University under C.R.C.P. 121 §1-10. Defendant did not file a response to the University's motion.

C.R.C.P. 121 §1-10 provides that a party may apply to the court to dismiss an action when the action has not been prosecuted or brought to trial with due diligence. See also C.R.C.P. 41(b)(1).

The power to dismiss a matter for failure to prosecute is within the sound discretion of the trial court. And, an unusual delay in prosecution may justify such a dismissal. Lake Meredith Reservoir Co. v. Amity Mutual Irrigation

Co., 698 P.2d 1340 (Colo. 1985).

Here, defendant failed to obtain counsel and take any action relating to his counterclaims from December, 1988, when the injunction was issued, to October, 1989, when they were dismissed. Moreover, he did not offer reasons to the court to explain the ten months of inaction. Consequently, we find that the trial court did not abuse its discretion.

Defendant has presented numerous other contentions of error. We have considered them all and find that they are without merit.

Accordingly, the trial court's injunction and judgment of dismissal are affirmed.

JUDGE PIERCE and JUDGE TURSI concur.

a18

THE COURT OF APPEALS OF THE STATE OF COLORADO

Case No. 89 CA 0124

BOARD OF REGENTS ET AL v. MAHINDER S. UBEROI

ORDER

Upon consideration of the Petition for Rehearing filed by the Appellant herein, said Petition is hereby DENIED. It is ordered that issuance of the Mandate hereby be, and the same hereby is, stayed to and including December 24, 1990, provided that if a Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the within cause by the Supreme Court.

J. PLANK
J. PIERCE
J. TURSI

Dated: November 23, 1990

SUPREME COURT, STATE OF COLORADO

Case No. 90 SC 752

Certiorari to the Colorado Court of Appeals 89 CA 0124
Boulder County District Court 88 CV 1545-5

MAHINDER S. UBEROI,
Petitioner

v.

BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO,
Respondent.

ORDER OF THE COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the opinion of said Court of Appeals,

IT IS THIS DAY ORDERED that said

Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, APRIL 15, 1991.

CHIEF JUSTICE ROVIRA does not participate.